In the Supreme Court of the United States.

No. 451. Of October Sessions, 1899.

The Fidelity Insurance, Trust and Safe Deposit Company, Executor under the Will of Daniel Craig, deceased, Plaintiff in Error,

vs.

Penrose A. McClain, Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

PAPER BOOK OF THE PLAINTIFF IN ERROR.

I. STATEMENT OF THE CASE.

This was an action brought by the Fidelity Insurance, Trust and Safe Deposit Company, executor under the will of Daniel Craig, deceased, against Penrose A. McClain, Collector of Internal Revenue for the First District of Pennsylvania, to recover an amount paid by the plaintiff to the defendant under protest, after the same had been assessed as a tax by the defendant against the plaintiff under the provisions of sections 29, 30, and 31 of an Act of Congress, approved June 13th, 1898, entitled "An Act to provide ways and means to meet war expenditures and for other purposes." An appeal to the

Commissioner of Internal Revenue having been taken under the provisions of section 3226 of the Revised Statutes, and the appeal having been refused, an action at law was brought by the plaintiff against the defendant in the Court of Common Pleas for Philadelphia County for the recovery of the money thus paid. In the statement of plaintiff's demand, which under the Pennsylvania practice takes the place of the declaration at common law, the facts were set forth and recovery claimed upon the ground that the Act of Congress, under which the tax was assessed and payment exacted, was in derogation of rights secured to citizens by the Federal Constitution in the following respects:—

(*a.*) That if the tax imposed by the Statute was a direct tax, it did not conform to the rule of apportionment prescribed by article I., section 2, paragraph 3, which is as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

(*b.*) If the tax assessed was an indirect tax, then it failed to conform to the rule of uniformity prescribed by article I., section 8, which is as follows:—

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

(See Record, page 6.)

The defendant, in accordance with the provisions of the Revised Statutes, removed the case from the Court of Common Pleas of Philadelphia County to the Circuit Court of the United States for the Eastern District of Pennsylvania and there filed a demurrer, taking issue upon the question at law raised by the plaintiff's averments as to the unconstitutionality of the Act of June 13th, 1898.

The case having been heard upon this demurrer, the demurrer was sustained, and by direction of the court judgment was entered for the defendant. (See record, page 13.) To this judgment a writ of error was taken by the plaintiff.

II. ASSIGNMENTS OF ERROR.

First.—That the court erred in sustaining the demurrer to the plaintiff's statement of claim, because by the statement of plaintiff's demand it appeared that the tax assessed against the plaintiff and exacted by the defendant was illegal, because the Act of Congress approved June 13th, 1898, entitled "An Act to provide ways and means to meet war expenditures and for other purposes," was in derogation of the provisions of article I., section 8, of the Constitution of the United States, which reads as follows:—

"The Congress shall have the power to lay and collect taxes, duties, imposts, and excises to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

Second.—That the court erred in sustaining the demurrer to the plaintiff's statement of claim, because by the statement of plaintiff's demand it appeared that the tax assessed against the plaintiff and exacted by the defendant was illegal, because the Act of Congress approved June 13th, 1898, entitled "An Act to provide ways and means to meet war expenditures and for other purposes," was in derogation of the provisions of article I., section 2, paragraph 3, of the Constitution of the United States, which reads as follows:—

"Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

III. ARGUMENT.

In the brief filed, by leave of the court, on behalf of the Fidelity Insurance, Trust and Safe Deposit Company in High *vs.* Coyne, Collector, No. 225, October Term, 1899, we have fully expressed the argument which we desire to submit to the court, and will not repeat the same at length. We, therefore, shall confine ourselves to stating an abstract of the same, as follows:—

(*a.*) Congress has no power to legislate with reference to the devolution of estates of decedents, or to regulate or con-

trol the exercise of the testamentary power of citizens of the several States. Legislative control over these matters is vested solely in the States. Hence an Act of Congress directing payment into the Federal treasury of a certain percentage of decedents' estates cannot be sustained as an exercise of the legislative power regulating the devolution of decedents' estates. If upheld, it must be sustained as a valid exercise of the Federal taxing power.

Pages 5 to 10.

(*b.*) The tax imposed by the Act of June 13th, 1898, is not an excise upon the right to receive a legacy or distributive share of a decedent measured by the amount received, but a tax upon the property of decedents in the hands of the executor or administrator measured by the aggregate amount of the estate after the payment of debts—the rate of taxation increasing by a graduated scale whereby estates are divided into six classes for purposes of taxation.

Pages 10 to 14.

(*c.*) A tax imposed upon property as such, not being an excise upon the receipt of a legacy or upon the right to take a distributive share in a decedent's estate, is a direct tax within the meaning of the Federal Constitution, and hence must be apportioned among the States in proportion to the census.

Pages 14 to 30.

(*d.*) If the tax imposed be regarded, not as a direct tax, but as an excise, then Congress has failed to follow the constitutional rule of uniformity by directing that the tax be levied in accordance with a graduated scale, whereby the rate of taxation increases as estates pass from a lower to a higher class for assessment— the line of demarkation between the several classes being simply a variation in the aggregate net amount of the estate of the decedent.

Page 30.

(*e.*) The rule of uniformity in taxation prescribed by the Constitution is not satisfied by a mere geographical uniform-

ity. A uniform rate of taxation upon the same subject matter wheresoever situate within the limits of the taxing power is necessarily involved.

Pages 30 to 40.

(*f.*) To justify classification for taxation there must be substantial differences between the subject matters which are placed in the several classes, and the difference must relate to the subject matter which is classified—therefore accidental or collateral circumstances cannot be made the basis of classification. While the courts will not review the legislative discretion involved in classification so long as the power is exercised upon rational lines, the courts have not hesitated to declare void statutes which, if upheld, would involve a fraud upon the power.

Pages 40 to 50.

(*g.*) A classification, the only basis of which is that the unit of taxation is found with certain other units of specified number in a common ownership, is without reason—nay, more, it violates the fundamental American principle that the law makes no distinction between the rich and poor.

Pages 50 to 52.

(*h.*) Any sanction to such distinction, either by legislative act or judicial decree, is calculated, by placing the burdens of government upon wealth, in the end to deprive the people at large of their due share in the conduct of government. That the powers of government are exercised by those who bear its burdens is the uniform testimony of history, and any class relieved by law from responsibility for the support of the State soon loses those characteristics of free citizenship which qualify it for participation in the privilege of a free government.

Pages 52 to 53.

(*i.*) Review of State decisions.

Pages 53 to 64.

The only additional matter which has come to our notice since the preparation of the first brief is found in the work upon the Growth of the Constitution in the Federal Convention of 1787, recently published by William M. Meigs, Esq., of the Philadelphia Bar. In this work the author has traced, by reference to the minutes of the convention and its several committees, the growth of each article, section and clause of the Constitution. We take the liberty of reprinting the result of Mr. Meigs' investigations as to article I., section 8, clause 1 (pages 128 to 134).

"ARTICLE I., SECTION 8, CLAUSE 1.

"The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

Charles Pinckney's speeches show that his draft conferred on the general government complete power to levy such imposts and duties for the use of the United States as Congress should think necessary and expedient, but he seems to have required a two-thirds vote in these cases; he said that he thought this power would remove that annual dependence on the States which they then experienced. In the Committee of Detail we find that the first power contained in Randolph's draft was—

"1. To raise money by taxation, unlimited as to sum, for the past and future debts and necessities of the Union, and to establish rules for collection."

But this he made subject to the exception of "no taxes on exports," and to the following restrictions:—

"1. Direct taxation proportional to representation.

"2. No capitation tax which does not apply to all inhabitants under the above limitation.

"3. *No indirect tax which is not common to all.*"

These provisions are, moreover, marked on the margin "argd," as if they had been submitted to the members of the committee at some time; but the following is the form in which they finally reported the matter:—

"Article VII., section 1. The legislature of the United States shall have the power to lay and collect taxes, duties, imposts, and excises."

When this came up before the Convention on August 16th there was some slight discussion as to the exact meaning of the words "duties" and "imposts," and then Mason moved a proviso to the clause as follows: "*Provided*, That no tax, duty, or imposition shall be laid by the Legislature of the United States on articles exported from any State;" and he said he hoped the Northern States did not mean to deny the Southern States this security. He was unwilling to trust to its being done in a future article (referring to a future section [4] of the same article), and professed his jealousy for the productions of the Southern or staple States. Williamson, Gerry, Mercer, Sherman, and Carroll supported the motion, while Gouverneur Morris, Madison, and Wilson were against it. Sherman thought the matter sufficiently provided for already in the later section, and was against the proviso here, because it would derange the plan. It was finally agreed that the matter should lie over for the place in which the exception stood in the report, and the clause as reported was agreed to.

On August 21st, Luther Martin moved, in the form of an amendment to article VII., section 3, a provision to require that direct taxes should be first apportioned among the States in accordance with the rule decided on, and that then requisitions should be made on the States for their respective quotas, and that laws for the collection of the same should only be enacted in case of the States' neglect to comply; but only New Jersey voted in favor of the proposal.

On August 23d, the clause as to the power to lay and collect taxes was amended to read as follows, the proportion prefixed being temporarily transferred here from another part of the Constitution, where it had originated and where it found its permanent lodgment (article VI., clause 1): "The legislature shall fulfill the engagements and discharge the debts of the United States, and shall have the power to lay and collect taxes, duties, imposts, and excises." This amended clause was agreed to, but Butler gave notice of a motion to reconsider, lest it should compel payment to the "bloodsuckers" who speculated, as well as to those who had bled for this country.

According to a vote on August 24th, the Convention proceeded on August 25th to reconsider the portion thus transferred to this clause as to fulfilling the engagements of the United States. Mason objected to its being imperative, and thought it might be impossible. He thought it would beget speculations, and argued that there was a great difference between original holders and those who had fraudulently purchased in the pestitential practice of stock jobbing. He did not mean to include those who had bought in the open market. He feared, also, that the word "shall" might extend to all the old Continental paper. After a short discussion, Randolph proposed to make the clause read: "All debts contracted, and engagements entered into, by or under the authority of Congress, shall be as valid against the United States, under this Constitution, as under the Confederation;" and this was adopted by ten States to one.

Sherman then suggested the necessity of connecting with the clause in the latter part of this section for laying taxes, duties, &c., an express provision for the object of the old debts, and accordingly moved to add to its end "for the payment of said debts, and for the defraying the expenses that shall be incurred for the common defense and general welfare." The convention, however, thought this unnecessary, and disagreed to it.

On August 18th Charles Pinckney had introduced into the convention a series of resolutions, and had them referred to the Committee of Detail; among them was a suggestion that the Committee be directed "to prepare a clause, or clauses, for restraining the Legislature of the United States from establishing a perpetual revenue." A like suggestion of Mason of August 18th was also referred to the same Committee. The Committee reported on August 22d, recommending that the end of the first clause of the first section of the seventh article, after the words "shall have power to lay and collect taxes, duties, imposts, and excises," the following should be added: "for payment of the debts and necessary expenses of the United States; provided that no law for raising any branch of revenue, except what may be specially appropriated for

the payment of interest on debts or loans, shall continue in force for more than years." This proposal was not called up or acted on, so it went to the Committee on Unfinished Portions; and on September 4th Brearly reported from it a recommendation that the first clause of the first section of article VII. should read: "The legislature shall have the power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defense and general welfare of the United States;" and this was at once agreed to *mem. con.*, and later referred to the Committee on Style.

This clause had, as has been seen, been preceded by the provision that "the legislature shall fulfill the engagements and discharge the debts of the United States;" and this was also referred to the Committee on Style. They transferred it back to that portion (article VI., clause 1) from which it had been for a time transferred here, and then reported the portions of the clause here concerned, as follows:—

"SECTION 8. (The Congress.) * * * They shall have power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and to provide for the common defense and general welfare of the United States."

During the comparison of the report of the Commitee on Style, with the articles agreed on, on September 14th, on motion of Gouverneur Morris, the following words were unanimously added to this clause:

"But all duties, imposts, and excises shall be uniform throughout the United States."

This was not a new idea of Morris's, but merely a transfer to this clause of matter which had originated in another part of the Constitution during the discussions which resulted in the prohibition (article I., section 9, clause 6) against giving any preference to one port of another. On August 25th McHenry and Charles Cotesworth Pinckney had moved a resolution, a portion of which read, "All duties, imposts, and excises, prohibitions, or restraints laid or made by the Legislature of the United States, shall be uniform and equal throughout the

United States," and this was at once referred to a special committee of one member from each State, to which were also referred other resolutions introduced the same day in regard to ports of entry and the giving of preferences to one port over another. This committee consisted of Langdon, Gorham, Sherman, Dayton, Fitzsimmons, Read, Carroll, Mason, Williamson, Butler, and Few; and from it Sherman reported on August 28th, recommending certain provisions, among which was an insert after the fourth section of the seventh article, a provision as to not giving preference to one port over another (see article I., section 9, clause 6), and the following words: "And all tonnage, duties, imposts, and excises laid by the Legislature, shall be uniform throughout the United States." The latter clause was agreed to on August 31st, after the word "tonnage" was struck out as being comprehended in "duties," but it seems to have been forgotten by the Committee on Style; it was no doubt the source of Gouverneur Morris's motion. (Meigs on the Growth of the Constitution, pages 128–134.)

The phrase as agreed on in the Committee of Detail, "No indirect tax which is not common to all" expresses with as great emphasis as language will permit the fundamental idea that in all matters relating to the levying of indirect taxes equality and uniformity shall be the unvarying rule. "Common to all," imports that as to all persons, subject to the taxing power, the legislature shall make no discrimination. This is not inconsistent with classification, but when the class has been determined and the subject matter of the tax specified, no arbitrary distinction can be invoked as a means whereby unequal burdens may be imposed.

With this additional suggestion we submit this case in connection with the brief heretofore filed, and ask that the judgment of the Circuit Court be reversed.

RICHARD C. DALE,
SAMUEL DICKSON,
JOHN C. BULLITT,
For Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

The Fidelity Insurance, Trust and Safe Deposit Company, Executor under the will of Daniel Craig, deceased, Plaintiff in Error,

vs.

Penrose A. McClain, Defendant in Error.

October Sessions, 1899.
No. 451.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR COMPLAINANT IN ERROR *SUR* ORDER OF FEBRUARY 26TH, 1900.

The question at issue as formulated in the order of court is:—

"Whether the tax or duty imposed on each of the legacies is measured by the volume of the estate or by the amount of the legacy."

We approach the discussion fully recognizing that a rule of gradation measured by the amount of the legacy might seem to have a basis in reason which could not exist when the gradation was measured by the total amount of the estate passing in legacies or distributive shares; and hence in order that the statute should have the most reasonable construction every intendment will be made in favor thereof.

But after giving full operation to this rule of interpretation, we submit that the language of the statute admits of no other

construction than that placed upon it by the Government in enforcing its provisions against the citizen and that the measure of the tax is the total volume of the estate passing in legacies or distributive shares and not the amount of each particular legacy.

We print as an appendix to this brief, sections 29 and 30 of the Act of June 13th, 1898, and immediately thereafter sections 124 and 125 of the Act of June 30th, 1864. (13 Statutes at Large, pages 285, 286.)

It will be perceived that the Act of 1898 is a literal copy of the Act of 1864, with these exceptions: In the fourth line of the first paragraph the exemption is increased from $1000 to $10,000, and clauses are inserted providing for an increase in rate as the "amount or value of said property shall exceed" the specified figures which are the dividing lines of the several classes.

Under the Act of 1864 it was the unquestioned construction that the exemption was limited to estates the entire volume of which passing in legacies or distributive shares did not exceed $1000. The maxim applies: *Contemporanea expositio est optima et fortissima in lege.*

The construction given to the Act of 1898 by the Government in enforcing its provisions is in accordance with the same understanding of the language found in the statute. The decisions made in the office of the Commissioner of Internal Revenue under the advice of the Department of Justice present a clear and unanswerable argument for this construction.

But passing from these matters, which are only pointers to the proper answer to the question at issue, we will take up the statute itself.

The subject matter of the tax is:—

"Legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of $10,000 in actual value passing after the passage of this Act from any person possessed of such property, either by will or by the intestate law of any State or Territory, * * * to any person or persons or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax to be paid to the United States."

It will be noticed that while the definition of the subject taxed opens with the general words—

"Legacies or distributive shares arising from personal property,"

The generality of the language is immediately qualified by the additional words :—

"Where the *whole* amount of such personal property as aforesaid shall exceed the sum of $10,000 in actual value passing after the passage of this Act from any person possessed of such property either by will or by the intestate laws."

These qualifying words divide legacies and distributive shares into two primary classes :—

(*a*.) Those where the *whole* amount of such property passing from the decedent in legacies or distributive shares exceeds $10,000.

(*b*.) Those where the whole amount of such property does not exceed $10,000.

Class (*a*) is taxed and class (*b*) is not taxed.

The language used in this clause could never be construed as importing a legislative intent to place in the taxed class only such legacies and distributive shares which, standing separately from other legacies passing from the same decedent, exceeded $10,000, and to place in the exempt class all legacies or distributive shares which, by themselves, did not exceed $10,000.

To place in the exempt class all legacies not exceeding $10,000, which is the inevitable consequence of adopting the construction contrary to that for which we contend, would do violence to the plain words of the statute :—

"Whole amount of *such* personal property * * * shall exceed the sum of $10,000 * * * passing * * * from any person possessed of such property, either by will or by the interstate laws."

That this definition of the subject matter taxed is accurate, may be seen by considering the anterior reference of the word "such" preceding the words "personal property." It points to the preceding line, "whole amount" of "legacies or distributive shares arising from personal property" in charge of "executors, administrators," &c. The sum total of the legacies, &c.

in the hands of the executors is the subject taxed if such sum total exceeds $10,000, if not, the fund in the hands of the executor is exempt.

If we have correctly stated the classification prescribed in the first paragraph of section 29—

(*a.*) Taxed estates in which the whole amount of personal property passing from a decedent in legacies or distributive shares exceeds $10,000, and

(*b.*) Exempt estates in which the whole amount so passing does not exceed $10,000,

The proper construction of the remaining paragraph of the section in which the amount or measure of the tax is prescribed is not difficult.

It will be observed that all through the following clauses the distinction is drawn between "the *whole* amount of said personal property," referring to the whole estate passing from the decedent in legacies or distributive shares, and "value of such interest in such property," as defining that which the legatee or distributee actually receives.

In the classification introduced by the draughtsman of the statute whereby the rate of tax increased with the amount, the language following that used a few lines above in expressing the distinction between the taxed subject matter and the exempt subject matter, is:—

CLASS 1. "Where the *whole amount of said personal property* shall exceed in value $10,000, and shall not exceed in value the sum of $25,000, the tax shall be * * *."

And the progressive rate as the amount increases is set forth in appropriate language showing that the basis of increase was the *property* of the decedent and not the value of the *interest* therein to be received or enjoyed as a legacy or distributive share by each separate beneficiary.

CLASS 2. "Where the amount or value of *said property* shall exceed the sum of $25,000, but shall not exceed the sum or value of $100,000, the rate of duty or tax above set forth shall be multiplied by one and one-half.

CLASS 3. "Where the amount or value of *said property* shall exceed the sum of $100,000, but shall not exceed the sum of $500,000, such rates of duty shall be multiplied by two.

CLASS 4. "Where the amount or value of *said property* shall exceed the sum of $500,000, but shall not exceed the sum of $1,000,000, such rates of duty shall be multiplied by two and one-half.

CLASS 5. "Where the amount or value of *said property* shall exceed the sum of $1,000,000, such rates of duty shall be multiplied by three."

This is a progressive gradation of the tax based upon the value of the whole amount of property passing from the decedent in legacies or distributive shares.

In the classification which is incident to the relationship of the legatee or distributee to the decedent, the draughtsman of the statute uses appropriate language to designate the legacy or distributive shares of each recipient.

"Where the person * * * entitled to any beneficial interest in *such property* shall be the lineal issue, &c., to the person who died possessed of *such property* as aforesaid, at the rate of seventy-five cents for each and every $100 of the clear value of *such interest* in such property."

And in appropriate language the rate for each $100 of the clear value of *such interest* is increased through the five classes as the degree of consanguinity becomes more remote.

But as is shown in convenient form in the table printed at page 4 of our original brief, the rate for distributees in the same degree of consanguinity increases in a gradation of five classes, depending upon the whole amount of the personal property passing in legacies or distributive shares either by will or by the intestate laws from the persons theretofore possessed of the same.

This clear and unequivocal expression of legislative intent must overcome any argument based upon the greater reasonableness of a tax system whereby a legacy of $20,000 would be subject to the same tax whether it was received from a decedent leaving $25,000 or from an estate of $2,000,000. The question before the court is not which is the more reasonable system of taxation. It is, what does the statute clearly express as the intention of the legislature? We submit that a consideration of the words of the statute leaves the question as one not open to doubt.

RICHARD C. DALE,
For the Fidelity Insurance, Trust and Safe Deposit Company.

APPENDIX.

Act of June 13th, 1898:—

SEC. 29. That any person or persons having in charge or trust as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of $10,000 in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust, or otherwise, shall be, and hereby are made subject to a duty or tax, to be paid to the United States as follows—that is to say: Where the whole amount of said personal property shall exceed in value $10,000 and shall not exceed in value the sum of $25,000, the tax shall be:—

First.—Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property as aforesaid, at the rate of seventy-five cents for each and every $100 of the clear value of such interest in such property.

Second.—Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed, as aforesaid, at the rate of one dollar and fifty cents for each and every $100 of the clear value of such interest.

Third.—Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of

the father or mother, or a descendant of a brother or sister of the father or mother, of the persons so died possessed as aforesaid, at the rate of three dollars for each and every hundred dollars of the clear value of such interest.

Fourth.—Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest.

Fifth.—Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than as hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: *Provided*, That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the person who died possessed, as aforesaid, shall be exempt from tax or duty.

Where the amount or value of said property shall exceed the sum of $25,000, but shall not exceed the sum or value of $100,000, the rates of duty or tax above set forth shall be multiplied by one and one-half, and where the amount or value of said property shall exceed the sum of $100,000, but shall not exceed the sum of $500,000, such rates of duty shall be multiplied by two; and where the amount or value of said property shall exceed the sum of $500,000, but shall not exceed the sum of $1,000,000, such rates of duty shall be multiplied by two and one-half; and where the amount or value of said property shall exceed the sum of $1,000,000, such rates of duty shall be multiplied by three.

SEC. 30. That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as

aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident, the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is or may be empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property, or personal estate under oath, as aforesaid, or shall neglect or refuse

to deliver the schedule, list, or statement of such legacies, property, or personal estate under oath, as aforesaid, or shall deliver to said collector or deputy collector a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interest therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment or decree, executed by the officer, lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this Act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid,

shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this Act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody any such records, files, or papers, shall refuse or neglect to exhibit the same on request, as aforesaid, he shall forfeit and pay the sum of $500: *Provided*, That in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be *prima facie* evidence of its truth, and that the requirements of the law had been complied with by the officers of the Government.

Act of June 30th, 1864:—

SEC. 124. *And be it further enacted*, That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property, as aforesaid, shall exceed the sum of $1000 in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body or bodies politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax to be paid to the United States, as follows, that is to say:—

First.—Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother or sister, to the person who died possessed of such property, as aforesaid, at the rate of one dollar for each and every $100 of the clear value of such interest in such property.

Second.—Where the person or persons entitled to any beneficial interest in such property shall be a descendant of a

brother or sister of the person who died possessed, as aforesaid, at the rate of two dollars for each and every $100 of the clear value of such interest.

Third.—Where the person or persons entitled to any beneficial interest in such property shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, of the person who died possessed, as aforesaid, at the rate of four dollars for each and every $100 of the clear value of such interest.

Fourth.—Where the person or persons entitled to any beneficial interest in such property shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed, as aforesaid, at the rate of five dollars for each and every hundred dollars of the clear value of such interest.

Fifth.—Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of six dollars for each and every hundred dollars of the clear value of such interest: *Provided*, That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the person who died possessed, as aforesaid, shall be exempt from tax or duty.

SEC. 125. *And be it further enacted*, That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid, for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector

of the district of which the deceased person was a resident, the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the assessor or assistant assessor of the said district a schedule, list, or statement, in duplicate of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered thereon, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement, said collector or deputy collector shall grant to such person, paying such duty or tax, a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee, to be credited and allowed such payment by every tribunal which, by the laws of any State of Territory, is or may be empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property or personal estate, under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall deliver to said assessor or assistant assessor a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons

entitled to beneficial interests therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the assistant assessor shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon, and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment, or decree, executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this Act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die as aforesaid, shall exhibit the same at the request of the assessor or assistant assessor of the district, and to any law officer of the United States, in the performance of his duty under this Act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody, *and* (any) such records, files, or papers, shall refuse or neglect to exhibit the

same on request as aforesaid, he shall forfeit and pay the sum of $500: *Provided*, (That) in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be *prima facie* evidence of its truth, and that the requirements of the law had been complied with by the officers of the Government.